

TIFFANY & BOSCO
P.A.

2525 EAST CAMELBACK ROAD
SUITE 300
PHOENIX, ARIZONA 85016
TELEPHONE: (602) 255-6000
FACSIMILE: (602) 255-0192

Mark S. Bosco
State Bar No. 010167
Leonard J. McDonald
State Bar No. 014228
Attorneys for Movant

09-19225

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

IN RE:

John P. Gallegos

Debtor.

Wells Fargo Bank, N.A.

Movant,

vs.

John P. Gallegos, Debtor;
David M. Reaves, Trustee.

Respondents.

No. 2:09-bk-16155-RJH

Chapter 7

Adversary Proceeding

Case No.: 2:09-ap-01355-RJH

**ADVERSARY COMPLAINT TO
DETERMINE DISCHARGEABILITY OF
DEBTS PURSUANT TO 11 U.S.C. §523
AND §727, AND OBJECTIONS
TO DISCHARGE**

Movant, Wells Fargo Bank, NA (hereinafter "Wells Fargo"), by and through its counsel, Tiffany & Bosco, P.A., for causes of action against the Respondents named above, alleges and complains as follows:

///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

- 2
- 3
- 4

5
67
8

9
10

11

12
13

14

15
16
17

18
19

20
21
22
23
24
25

1 9. Upon information and belief, Respondent acting through title agencies
2 owned and/or controlled by Waunita Weingart and/or Respondent closed at least
3 eighteen loans allegedly secured by the Angel Road Property from 1999 through 2008 in
4 excess of \$6.7 million. Upon information and belief, these title agencies include
5 Colorado County & Community Title, LLC and Real Estate Title, LLC.

6 10. Upon information and belief, the title agencies owned and/or controlled by
7 Waunita Weingart and/or Respondent did not use the loan proceeds to satisfy prior
8 encumbrances upon the Angel Road Property. Rather, upon information and belief, the
9 loan proceeds were either converted or were used at least in part to debt service the
10 numerous loans on the Angel Road Property for some period of time.

11 11. Upon information and belief, the title agencies owned and/or controlled by
12 Waunita Weingart and/or Respondent either did not record or did not timely record the
13 multiple deeds of trust on the Angel Road Property. Many of said deeds of trust were
14 recorded years after the date of execution or were not recorded at all.

15 12. Upon information and belief, the title agencies owned and/or controlled by
16 Waunita Weingart and/or Respondent did not disclose the existence of the untimely
17 recorded or unrecorded deeds of trust to Wells Fargo, or any of the other lenders with a
18 purported interest in the Angel Road Property.

19 13. On February 25, 2009, Wells Fargo Bank, N.A., as Trustee of the Security
20 National Mortgage Loan Trust 2005-2, caused a foreclosure sale of the Property to be
21 conducted pursuant to a deed of trust dated October 12, 2000 and recorded on April 22,
22 2002 at Reception No. 02038658 in the office of the Clerk and Recorder of Douglas
23 County, Colorado. This foreclosure sale extinguished the Deeds of Trust of Wells Fargo
24 on the Angel Road Property. As a result, Wells Fargo was left with no security interest
25 in the Angel Road Property.

1 14. Upon information and belief, due to the pattern of fraud committed over
2 the last ten years by Respondents and their title agents, multiple deeds of trust, both
3 recorded and unrecorded, were executed purportedly securing in excess of \$6.7 million
4 of loans payable to numerous lenders on the Angel Road Property. Upon information
5 and belief, nearly all of these deeds of trust were intended by the lenders to represent
6 first position liens on the Angel Road Property, which was valued at \$431,303.00
7 according to the most recent valuation of the Douglas County Assessor's Office.

8 **FIRST CAUSE OF ACTION**

9 15. Based upon the facts set forth herein, Respondent's debt on the Wells
10 Fargo Loans are non-dischargeable pursuant to 11 U.S.C. § 523(a)(2) and (4), and 11
11 U.S.C. § 727(a)(4).

12 16. Pursuant to the terms of the subject Promissory Notes and Deeds of Trust
13 for the Wells Fargo Loans, Wells Fargo is entitled to an award of attorneys' fees and
14 costs incurred herein.

15 **PRAYER**

16 WHEREFORE, Movant prays for judgment on all causes of action set forth
17 herein as follows:

18 1. For an order determining that Respondent's respective debts referenced
19 herein are nondischargeable pursuant to 11 U.S.C. § 523(a)(2) and (4);

20 2. For an order denying the entire discharge of Respondent pursuant to 11
21 U.S.C. § 727(a)(4);

22 3. For an award of attorneys' fees incurred herein;

23 4. For costs of court;

24 5. For any and all additional relief deemed appropriate by this Honorable
25 Court.

1 DATED this 19th day of October, 2009.

2 TIFFANY & BOSCO, P.A.

3

4

By /s/ MSB # 010167

5

Mark S. Bosco

6

Leonard J. McDonald

7

2525 East Camelback Road, Suite 300

Phoenix, Arizona 85016

Attorneys for Movant

8

9 Copy of the foregoing was
mailed on October 19, 2009, to:

10

John P. Gallegos
20606 N. Tammy St.
Maricopa, AZ 85238
Debtor

12

13 Leonard V. Sominsky
3839 N. 3rd Street
Suite 205
Phoenix, AZ 85012
Attorney for Debtor

15

16 David M. Reaves
P.O. Box 44320
Phoenix, AZ 85064-4320
Trustee

18

19 Colorado State Department of Revenue
1375 Sherman St. Rm #409
Denver, CO 80261

20

21 Internal Revenue Service
Spec Proc MS# 5082PX
210 East Earll Dr BK Disc
Phoenix, AZ 85012-9863

22

23 U.S. Trustee
230 North 1st Avenue, Suite 204
Phoenix, AZ 85003-1706

24

By: Paula D. Hillock

25

R:\WP\LJW\bankruptcy\gallegos\09-25556_ADVCOMPLAINT.DOC

26

TIFFANY & BOSCO
P.A.

2525 EAST CAMELBACK ROAD
SUITE 300

PHOENIX, ARIZONA 85016

TELEPHONE: (602) 255-6000

FACSIMILE: (602) 255-0192

Mark S. Bosco
State Bar No. 010167
Leonard J. McDonald
State Bar No. 014228
Attorneys for Movant

09-19225

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

IN RE:

John P. Gallegos

Debtor.

Wells Fargo Bank, N.A.

Movant,
vs.

John P. Gallegos, Debtor;
David M. Reaves, Trustee.

Respondents.

No. 2:09-bk-16155-RJH

Chapter 7

Adversary Proceeding

Case No.: 2:09-ap-01355-RJH

**NOTICE OF FILING AND SERVICE OF
ADVERSARY COMPLAINT TO
DETERMINE DISCHARGEABILITY OF
DEBTS PURSUANT TO 11 U.S.C. §523
AND §727, AND OBJECTIONS
TO DISCHARGE**

NOTICE IS HEREBY GIVEN that the above Movant has filed an Adversary Complaint to Determine Dischargeability of Debts Pursuant to 11 U.S.C. § 523 and §727, and Objections to Discharge, the details of which are as follows:

1 Movant asserts that Defendants misrepresented and omitted important
2 information in obtaining the line of credit. Therefore, Plaintiff is entitled to an Order of
Non-Dischargeability of the debt.

3
4 FURTHER NOTICE IS HEREBY GIVEN that pursuant to Local Bankruptcy
5 Rule 4001 if no objection is filed with the court and a copy served on Movant whose
address is:

6
7 Wells Fargo Bank, N.A.
8 c/o Mark S. Bosco, Esq.
9 2525 East Camelback Road, Suite 300
Phoenix, Arizona 85016

10 WITHIN 15 DAYS of service of the motion, the motion for relief from the automatic
11 stay may be granted without further hearing.

12 FINALLY, Movant's Counsel certifies that a letter was sent seeking to resolve
13 the issues necessitating the motion, to Debtor's Counsel or the Debtor if the Debtor is
14 without counsel and that after sincere effort the parties have been unable to resolve the
matter, and the letter was sent at least five (5) business days prior to the filing of the
motion.

15 DATED this 19th day of October, 2009.

16
17 TIFFANY & BOSCO, P.A.

18 By /s/ MSB # 010167

19 Mark S. Bosco

20 Leonard J. McDonald

21 Attorneys for Movant
22
23
24
25
26

1 Copy of the foregoing was
2 mailed on October 19, 2009, to:

3 John P. Gallegos
4 20606 N. Tammy St.
5 Maricopa, AZ 85238
6 Debtor

7 Leonard V. Sominsky
8 3839 N. 3rd Street
9 Suite 205
10 Phoenix, AZ 85012
11 Attorney for Debtor

12 David M. Reaves
13 P.O. Box 44320
14 Phoenix, AZ 85064-4320
15 Trustee

16 Colorado State Department of Revenue
17 1375 Sherman St. Rm #409
18 Denver, CO 80261

19 Internal Revenue Service
20 Spec Proc MS# 5082PX
21 210 East Earll Dr BK Disc
22 Phoenix, AZ 85012-9863

23 U.S. Trustee
24 230 North 1st Avenue, Suite 204
25 Phoenix, AZ 85003-1706
26

By: Paula D. Hillock

R:\WP\LJM\Bankruptcy\Gallegos\09-25956_ADVCOMPLAINT.DOC